

AMENDED IN SENATE MARCH 20, 2007

SENATE BILL

No. 31

Introduced by Senator Simitian

December 4, 2006

An act to add Title 1.80 (commencing with Section 1798.79) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Simitian. Identification documents.

The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, except as specified. Existing law also prohibits certain business entities, as defined, from making specified disclosures in relation to individual consumer records.

This bill would provide that a person or entity that intentionally remotely reads or attempts to remotely read a person's identification document, as defined, using radio waves without his or her knowledge and prior consent, as described, shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$5,000, or both that fine and imprisonment.

By creating a new crime, this bill would result in a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) The right to privacy is a personal and fundamental right
4 protected by Section 1 of Article I of the California Constitution
5 and by the United States Constitution. All individuals have a right
6 of privacy in information pertaining to them.

7 (b) This state has previously recognized the importance of
8 protecting the confidentiality and privacy of an individual's
9 personal information contained in identification documents such
10 as drivers' licenses.

11 SEC. 2. Title 1.80 (commencing with Section 1798.79) is added
12 to Part 4 of Division 3 of the Civil Code, to read:

13
14 TITLE 1.80. IDENTIFICATION DOCUMENTS
15

16 1798.79. (a) Except as provided in subdivisions (b) and (c), a
17 person or entity that intentionally remotely reads or attempts to
18 remotely read a person's identification document using radio
19 waves, for the purpose of reading that person's identification
20 document without that person's knowledge and prior consent, shall
21 be punished by imprisonment in a county jail for up to one year,
22 a fine of not more than five thousand dollars (\$5,000), or both that
23 fine and imprisonment.

24 (b) Subdivision (a) shall not apply to:

25 (1) The reading of a person's identification document for triage
26 or medical care during a disaster and immediate hospitalization or
27 immediate outpatient care directly related to a disaster, as defined
28 by the local emergency medical services agency organized under
29 Section 1797.200 of the Health and Safety Code.

30 (2) The reading of a person's identification document by a health
31 care professional for reasons relating to the health or safety of that
32 person or an identification document issued to a patient by
33 emergency services.

34 (3) The reading of an identification document of a person who
35 is incarcerated in the state prison or a county jail, detained in a
36 juvenile facility operated by the Division of Juvenile Facilities in
37 the Department of Corrections and Rehabilitation, or housing in
38 a mental health facility, pursuant to a court order after having been

1 charged with a crime, or to a person pursuant to a court-ordered
2 electronic monitoring.

3 (4) Law enforcement or government personnel who need to
4 read a lost identification document when the owner is unavailable
5 for notice, knowledge, or consent, or those parties specifically
6 authorized by law enforcement or government personnel for the
7 limited purpose of reading a lost identification document when
8 the owner is unavailable for notice, knowledge, or consent.

9 (5) Law enforcement personnel who need to read a person's
10 identification document after an accident in which the person is
11 unavailable for notice, knowledge, or consent.

12 (6) Law enforcement personnel who need to read a person's
13 identification document pursuant to a search warrant.

14 (7) A person or entity that in the course of operating its own
15 contactless identification document system inadvertently reads or
16 collects data from another contactless identification document
17 system, provided that the inadvertently received data comports
18 with all of the following:

19 (A) The data is not disclosed to any other party.

20 (B) The data is not used for any purpose.

21 (C) The data is not stored or is promptly destroyed.

22 (c) Nothing in this section shall affect the existing rights of law
23 enforcement to access data stored electronically on drivers'
24 licenses.

25 (d) The penalties set forth in subdivision (a) are independent
26 of, and do not supersede, any other penalties provided by state
27 law, and in the case of any conflict, the greater penalties shall
28 apply.

29 1798.795. For purposes of this title, the following definitions
30 shall apply:

31 (a) "Contactless identification document system" means a group
32 of identification documents issued and operated under a single
33 authority that use radio waves to transmit data remotely to readers
34 intended to read that data. In a contactless identification document
35 system, every reader must be able to read every identification
36 document in the system.

37 (b) "Data" means information stored on an identification
38 document in machine-readable form including, but not limited to,
39 personally identifiable information and other unique personal
40 identifier numbers.

(c) ~~(1)~~—“Identification document” means any document containing data that is issued to an individual and which that individual, and only that individual, uses alone or in conjunction with any other information for the primary purpose of establishing his or her identity. Identification documents specifically include, but are not limited to, the following:

~~(A)~~

(1) Driver’s licenses or identification cards issued pursuant to Section 13000 of the Vehicle Code.

~~(B)~~

(2) Identification cards for employees or contractors.

~~(C)~~

(3) Identification cards issued by educational institutions.

~~(D)~~

(4) Health insurance or benefit cards.

~~(E)~~

(5) Benefit cards issued in conjunction with any government-supported aid program.

~~(F)~~

(6) Licenses, certificates, registration, or other means to engage in a business or profession regulated by the Business and Professions Code.

~~(G)~~

(7) Library cards issued by any public library.

~~(2) Identification documents do not include devices issued to persons for the limited purpose of collecting funds for the use of a toll bridge or toll road, such as devices used by the FasTrak system, if the device is not issued for the exclusive use of an individual and does not transmit or enable the remote reading using radio waves of personally identifiable information.~~

(d) “Personally identifiable information” includes any of the following data elements to the extent that they are used alone or in conjunction with any other information to identify an individual:

(1) First or last name.

(2) Address.

(3) Telephone number.

(4) E-mail address.

(5) Date of birth.

(6) Driver’s license number or California identification card number.

1 (7) Any unique personal identifier number contained or encoded
2 on a driver's license or identification card issued pursuant to
3 Section 13000 of the Vehicle Code.

4 (8) Bank, credit card, or other financial institution account
5 number.

6 (9) Credit or debit card number.

7 (10) Any unique personal identifier number contained or
8 encoded on a health insurance, health benefit, or benefit card issued
9 in conjunction with any government-supported aid program.

10 (11) Religion.

11 (12) Ethnicity or nationality.

12 (13) Photograph.

13 (14) Fingerprint or other biometric identification.

14 (15) Social security number.

15 (e) "Reader" means a scanning device that is capable of using
16 radio waves to communicate with an identification document and
17 read the data transmitted by that identification document.

18 (f) "Remotely" means that no physical contact between the
19 identification document and a reader is necessary in order to
20 transmit data using radio waves.

21 (g) "Unique personal identifier number" means a randomly
22 assigned string of numbers or symbols that is encoded onto the
23 identification document and is intended to identify the identification
24 document that has been issued to a particular individual.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.